

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

BROADCAST MUSIC, INC.;)	2007 OCT 12 P 2:23
FANTASY, INC. d/b/a JONDORA MUSIC;)	DEBRA P. HACKETT, CLK
EVIL EYE MUSIC, INC.; MICHAEL)	U.S. DISTRICT COURT
BALZARY, JOHN ANTHONY FRUSCIANTE,)	MIDDLE DISTRICT ALA
ANTHONY KIEDIS and CHAD GAYLORD)	
SMITH, a partnership d/b/a)	
MOEBETOBLAME MUSIC; SPIRIT ONE)	
MUSIC, A Division of SPIRIT MUSIC)	Civil Action No.:
GROUP INC.; BOCEPHUS MUSIC, INC.;)	3:07cv921-MHT
HOUSE OF CASH, INC.; EMI VIRGIN)	
SONGS, INC.; ERIC ADAM AVERY d/b/a)	
BUBBLY ORANGE STUFF MUSIC; PERRY)	<u>COMPLAINT</u>
FARRELL d/b/a I'LL HIT YOU BACK)	
MUSIC; DAVID MICHAEL NAVARRO d/b/a)	
EMBRYOTIC MUSIC; STEPHEN ANDREW)	
PERKINS d/b/a SWIZZLESTICK MUSIC;)	
RIO BRAVO MUSIC, INC.; NIGHT GARDEN)	
MUSIC, A Division Of R.E.M./ATHENS,)	
LTD.; UNIVERSAL-DUCHESS MUSIC)	
CORPORATION; WARNER-TAMERLANE)	
PUBLISHING CORP.; SONGS OF)	
UNIVERSAL, INC.; EMI VIRGIN SONGS,)	
INC. d/b/a EMI LONGITUDE MUSIC;)	
JAMES W. BUFFETT, an individual)	
d/b/a CORAL REEFER MUSIC; ENSIGN)	
MUSIC LLC; UNICHAPPELL MUSIC INC.;)	
JOHN FARARR d/b/a JOHN FARRAR)	
MUSIC; RIVERS CUOMO, an individual)	
d/b/a E.O. SMITH MUSIC; UNIVERSAL-)	
SONGS OF POLYGRAM INTERNATIONAL,)	
INC.; ANTHONY L. RAY, an individual)	
d/b/a MIX-A-LOT PUBLISHING; AZOFF)	
ENTERTAINMENT, INC. and WARNER)	
BROTHERS RECORDS, INC. a joint)	
venture d/b/a BIG GIANT MUSIC; TODD)	
PARK MOHR, an individual d/b/a)	
PARK MOHR PUBLISHING COMPANY;)	
)	
Plaintiffs,)	

v.)
FOURTH QUARTER, INC. d/b/a SKYBAR)
CAFÉ, PATRICK J. GRIDER AND DANIEL)
GRIDER, each individually.)
Defendants.)

Plaintiffs, by their attorneys, for their Complaint against Defendants, allege as follows (on knowledge as to Plaintiffs; otherwise on information and belief):

JURISDICTION AND VENUE

1. This is a suit for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. Sections 101 *et seq.* (the "Copyright Act"). This Court has jurisdiction pursuant to 28 U.S.C. Section 1338(a).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1400(a).

THE PARTIES

3. Plaintiff, Broadcast Music, Inc. ("BMI"), is a corporation organized and existing under the laws of the State of New York. BMI's principal place of business is 320 West 57th Street, New York, New York 10019. BMI has been granted the right to license the public performance rights in approximately 6.5 million copyrighted musical compositions (the "BMI repertoire"), including those which are alleged herein to have been infringed.

4. The other Plaintiffs are the owners of the copyrights in the musical compositions which are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R. Civ. P. 17(a) and 19(a).
5. Defendant Fourth Quarter, Inc. is a corporation organized and existing under the laws of the state of Alabama, which operates, maintains and controls an establishment known as SkyBar

Café, located at 136 W. Magnolia Ave, Auburn, Alabama in this district (the "Establishment").

6. In connection with the operation of this business, Defendant Fourth Quarter, Inc. publicly performs musical compositions and/or causes musical compositions to be publicly performed.

7. Defendant Fourth Quarter, Inc. has a direct financial interest in the Establishment.

8. Defendant Patrick J. Grider, 1416 Saugahatchee Road, Auburn, Alabama, is an officer of Defendant Fourth Quarter, Inc. with primary responsibility for the operation and management of that corporation and the Establishment.

9. Defendant Patrick J. Grider has the right and ability to supervise the activities of Fourth Quarter, Inc. and a direct financial interest in that corporation and the Establishment.

10. Defendant Daniel Grider, 1416 Saugahatchee Road, Auburn, Alabama, is an officer of Defendant Fourth Quarter, Inc. with responsibility for the operation and management of that corporation and the Establishment.

11. Defendant Daniel Grider has the right and ability to supervise the activities of Fourth Quarter, Inc. and a direct financial interest in that corporation and the Establishment.

CLAIMS OF COPYRIGHT INFRINGEMENT

12. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 11.

13. Plaintiffs allege twenty (20) claims of copyright infringement, based upon Defendants' unauthorized public performance of musical compositions from the BMI repertoire. All of the claims for copyright infringement joined in this Complaint are governed by the same legal rules and involve similar facts. Joinder of these claims will promote the convenient administration of justice and will avoid a multiplicity of separate, similar actions against Defendants.

14. Annexed as the Schedule and incorporated herein is a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. The Schedule contains information on the twenty (20) claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information: Line 1 providing the claim number; Line 2 listing the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 noting the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the copyright registration was issued for the musical composition; Line 6 indicating the Registration number(s); Line 7 showing the date(s) of infringement; and Line 8 identifying the location of the Establishment where the infringement occurred.

15. Each of the musical compositions identified on the Schedule, Line 2, were created by the persons named on Line 3 (all references to Lines are lines on the Schedule).

16. On or about the dates indicated on Line 5, the publishers named on Line 4 (including any predecessors in interest), complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the numbers listed on Line 6.

17. On the dates listed on Line 7, Plaintiff BMI was and still is the licensor of the public performance rights in the musical compositions identified on Line 2. On the dates listed on Line 7, the Plaintiffs listed on Line 4 were and still are the owners of the copyright in the respective musical composition listed on Line 2.

18. On the dates listed on Line 7, Defendants performed and/or caused the musical compositions identified on Line 2 to be publicly performed at the Establishment without a license

or permission to do so. Thus, Defendants have committed copyright infringement.

19. The specific acts of copyright infringement alleged, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable damage. By continuing to provide unauthorized public performances of works in the BMI repertoire at the Establishment, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray that:

- (I) Defendants, their agents, servants, employees, and all persons acting under their permission and authority, be enjoined and restrained from infringing, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. Section 502;
- (II) Defendants be ordered to pay statutory damages, pursuant to 17 U.S.C. Section 504(c);
- (III) Defendants be ordered to pay costs, including a reasonable attorney's fee, pursuant to 17 U.S.C. Section 505; and
- (IV) That Plaintiffs have such other and further relief as is just and equitable.

Dated: October 12, 2007

By:

Gilbert E. Johnston
Gilbert E. Johnston, Jr. (JCH023)
Attorney for Plaintiffs

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PLAINTIFF WILL SERVE DEFENDANT BY PERSONAL SERVICE UPON RECEIPT OF A PROPERLY ISSUED SUMMONS AND COMPLAINT FROM THE CLERK OF COURT. PLAINTIFF WILL EXECUTE THE NECESSARY RETURN OF SERVICE FOR SUBMISSION TO THE COURT WITHIN 120 DAYS OF THE FILING OF THE COMPLAINT, PURSUANT TO RULE 4 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

W0619660.DOC

Schedule

Line 1	Claim No.	1
Line 2	Musical Composition	Born On The Bayou
Line 3	Writer(s)	John Fogerty
Line 4	Publisher Plaintiff(s)	Fantasy, Inc. d/b/a Jondora Music
Line 5	Date(s) of Registration	12/27/68 2/16/70
Line 6	Registration No(s).	Eu 91336 Ep 272080
Line 7	Date(s) of Infringement	4/30/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	2
Line 2	Musical Composition	Boy Named Sue a/k/a A Boy Named Sue
Line 3	Writer(s)	Shel Silverstein
Line 4	Publisher Plaintiff(s)	Evil Eye Music, Inc.
Line 5	Date(s) of Registration	4/29/69 6/25/70
Line 6	Registration No(s).	Eu 112300 Ep 275018
Line 7	Date(s) of Infringement	5/1/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	3
Line 2	Musical Composition	Californication
Line 3	Writer(s)	Anthony Kiedis; Michael Balzary p/k/a Flea; Chad Smith; John Frusciante
Line 4	Publisher Plaintiff(s)	Michael Balzary, John Anthony Frusciante, Anthony Kiedis and Chad Gaylord Smith, a partnership d/b/a Moebetoblame Music
Line 5	Date(s) of Registration	3/29/99
Line 6	Registration No(s).	PAu 2-357-353
Line 7	Date(s) of Infringement	5/2/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	4
Line 2	Musical Composition	Can't You See
Line 3	Writer(s)	Toy Talmadge Caldwell
Line 4	Publisher Plaintiff(s)	Spirit One Music, A Division of Spirit Music Group Inc.
Line 5	Date(s) of Registration	3/29/73 1/15/76
Line 6	Registration No(s).	Eu 396045 Ep 347698
Line 7	Date(s) of Infringement	4/30/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	5
Line 2	Musical Composition	Family Tradition
Line 3	Writer(s)	Hank Williams, Jr.
Line 4	Publisher Plaintiff(s)	Bocephus Music, Inc.
Line 5	Date(s) of Registration	2/8/79
Line 6	Registration No(s).	PA 32-171
Line 7	Date(s) of Infringement	4/30/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	6
Line 2	Musical Composition	Folsom Prison a/k/a Folsom Prison Blues
Line 3	Writer(s)	John R. Cash a/k/a Johnny Cash
Line 4	Publisher Plaintiff(s)	House of Cash, Inc.
Line 5	Date(s) of Registration	2/13/84 9/14/56
Line 6	Registration No(s).	RE 196-295 Ep 102326
Line 7	Date(s) of Infringement	5/2/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	7
Line 2	Musical Composition	Jane Says
Line 3	Writer(s)	Perry Farrell; Eric Avery; David Navarro; Stephen Perkins;
Line 4	Publisher Plaintiff(s)	EMI Virgin Songs, Inc.; Eric Adam Avery d/b/a Bubbly Orange Stuff Music; Perry Farrell d/b/a I'll Hit You Back Music; David Michael Navarro d/b/a Embryotic Music; Stephen Andrew Perkins d/b/a Swizzlestick Music
Line 5	Date(s) of Registration	11/17/88
Line 6	Registration No(s).	PA 410-734
Line 7	Date(s) of Infringement	5/1/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	8
Line 2	Musical Composition	Miss Rodeo AKA Rodeo
Line 3	Writer(s)	Larry Bastian
Line 4	Publisher Plaintiff(s)	Rio Bravo Music, Inc.
Line 5	Date(s) of Registration	8/5/91
Line 6	Registration No(s).	PA 538-349
Line 7	Date(s) of Infringement	5/1/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	9
Line 2	Musical Composition	Orange Crush
Line 3	Writer(s)	William Thomas Berry; Peter Lawrence Buck; Michael Edward Mills; John Michael Stipe
Line 4	Publisher Plaintiff(s)	Night Garden Music, A Division of R.E.M./Athens, Ltd.
Line 5	Date(s) of Registration	2/13/89
Line 6	Registration No(s).	PA 417-645
Line 7	Date(s) of Infringement	5/1/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	10
Line 2	Musical Composition	Pirate Looks At Forty AKA A Pirate Looks At Forty
Line 3	Writer(s)	Jimmy Buffett
Line 4	Publisher Plaintiff(s)	Universal - Duchess Music Corporation
Line 5	Date(s) of Registration	12/9/74 4/13/82 6/24/82
Line 6	Registration No(s).	Eu 541397 PA 134-807 PA 143-238
Line 7	Date(s) of Infringement	5/1/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	11
Line 2	Musical Composition	She Talks To Angels
Line 3	Writer(s)	Chris Robinson; Rich Robinson
Line 4	Publisher Plaintiff(s)	Warner-Tamerlane Publishing Corp.
Line 5	Date(s) of Registration	8/14/91
Line 6	Registration No(s).	PA 532-894
Line 7	Date(s) of Infringement	4/30/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	12
Line 2	Musical Composition	Simple Man
Line 3	Writer(s)	Gary Rossington; Ronnie Van Zant
Line 4	Publisher Plaintiff(s)	Songs of Universal, Inc.; EMI Virgin Songs, Inc. d/b/a EMI Longitude Music
Line 5	Date(s) of Registration	10/1/73 6/9/88
Line 6	Registration No(s).	Eu 448563 PA 373-493
Line 7	Date(s) of Infringement	4/30/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	13
Line 2	Musical Composition	Son Of A Son Of A Sailor
Line 3	Writer(s)	Jimmy Buffett
Line 4	Publisher Plaintiff(s)	James W. Buffett, an individual d/b/a Coral Reefer Music
Line 5	Date(s) of Registration	5/30/78 11/17/78
Line 6	Registration No(s).	PA 55-978 PA 23-428
Line 7	Date(s) of Infringement	5/1/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	14
Line 2	Musical Composition	Soul To Squeeze
Line 3	Writer(s)	Anthony Kiedis; Michael Balzary p/k/a Flea; John Frusciante; Chad Smith
Line 4	Publisher Plaintiff(s)	Ensign Music LLC; Michael Balzary, John Anthony Frusciante, Anthony Kiedis and Chad Gaylord Smith, a partnership d/b/a Moebetoblame Music
Line 5	Date(s) of Registration	10/25/93
Line 6	Registration No(s).	PA 660-217
Line 7	Date(s) of Infringement	4/30/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	15
Line 2	Musical Composition	Whiskey Bent And Hell Bound
Line 3	Writer(s)	Hank Williams, Jr.
Line 4	Publisher Plaintiff(s)	Bocephus Music, Inc.
Line 5	Date(s) of Registration	9/6/79
Line 6	Registration No(s).	PA 43-935
Line 7	Date(s) of Infringement	5/2/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	16
Line 2	Musical Composition	You're The One That I Want
Line 3	Writer(s)	John Farrar
Line 4	Publisher Plaintiff(s)	Unichappell Music Inc.; John Farrar d/b/a John Farrar Music; Ensign Music LLC
Line 5	Date(s) of Registration	4/28/78
Line 6	Registration No(s).	PA 3-376
Line 7	Date(s) of Infringement	4/30/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	17
Line 2	Musical Composition	Say It Ain't So
Line 3	Writer(s)	Rivers Cuomo
Line 4	Publisher Plaintiff(s)	Rivers Cuomo, an individual d/b/a E. O. Smith Music
Line 5	Date(s) of Registration	3/20/96
Line 6	Registration No(s).	PA 787-865
Line 7	Date(s) of Infringement	5/1/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	18
Line 2	Musical Composition	Baby Got Back
Line 3	Writer(s)	Anthony L. Ray
Line 4	Publisher Plaintiff(s)	Universal -Songs of Polygram International, Inc; Anthony L. Ray, an individual d/b/a Mix-A-Lot Publishing
Line 5	Date(s) of Registration	11/16/92
Line 6	Registration No(s).	PA 594 005
Line 7	Date(s) of Infringement	5/1/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	19
Line 2	Musical Composition	Bittersweet a/k/a Bitter Sweet
Line 3	Writer(s)	Todd Park Mohr
Line 4	Publisher Plaintiff(s)	Azoff Entertainment, Inc. and Warner Brothers Records, Inc., a joint venture d/b/a Big Giant Music; Todd Park Mohr, an individual d/b/a Park Mohr Publishing Company
Line 5	Date(s) of Registration	8/6/93
Line 6	Registration No(s).	PA 629-008
Line 7	Date(s) of Infringement	5/1/07
Line 8	Place of Infringement	SkyBar Cafe

Line 1	Claim No.	20
Line 2	Musical Composition	Dani California
Line 3	Writer(s)	Anthony Kiedis; Michael Balzary; Chad Smith; John Frusciante
Line 4	Publisher Plaintiff(s)	Michael Balzary, John Anthony Frusciante, Anthony Kiedis and Chad Gaylord Smith, a partnership d/b/a Moebetoblame Music
Line 5	Date(s) of Registration	6/1/06
Line 6	Registration No(s).	PA 1-334-481
Line 7	Date(s) of Infringement	4/30/07
Line 8	Place of Infringement	SkyBar Cafe

DUPLICATE

Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602000732
Cashier ID: kalandra
Transaction Date: 10/12/2007
Payer Name: JOHNSTON BARTON PROCTOR ET AL

CIVIL FILING FEE

For: JOHNSTON BARTON PROCTOR ET AL
Case/Party: D-ALM-3-07-CV-000921-001
Amount: \$350.00

CHECK

Check/Money Order Num: 34097
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

BROADCAST MUSIC ET AL V. FOURTH QUARTER INC. ET AL